

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RICHARD J. MORRELL,  
Plaintiff,

v.

JAMES SEPULVEDA, et al.,  
Defendants.

Case No. [16-cv-00798-SI](#)

**ORDER DISMISSING CASE WITHOUT  
PREJUDICE FOR FAILURE TO PAY  
FILING FEE**

Re: Dkt. Nos. 18, 19

On February 17, 2016, plaintiff filed his original complaint and an application to proceed *in forma pauperis* (IFP) before Magistrate Judge Kandis A. Westmore. Dkt. Nos. 1, 2. On March 3, 2016, plaintiff's IFP application was denied with leave to amend. *See* Dkt. No. 6. Judge Westmore concluded that plaintiff had filed an incomplete application, in that he had not fully answered question numbers 4, 7, 9, and 10. *Id.* The order stated:

Plaintiff has not indicated the amount he contributes to his spouse's support in his response to question 4.a, and while Plaintiff indicates that he has a bank account, he does not state the name and address of his bank and does not indicate the present balance in his account, all of which is required under question 7. Plaintiff has also failed to respond to question 9, which asks whether he has any other debts. Additionally, Plaintiff states that his complaint does not raise claims that have been presented in other lawsuits, but it appears that he has previously sued the same defendants in this court. *See, e.g., Morrell v. Cowin*, No. 97-cv-02684-VRW; *Morrell v. Cowin*, No. 97-cv-3890-VRW; *Morrell v. McCardle*, No. 98-cv-00174-VRW; *Morrell v. Contra Costa County*, 98-cv-02636-VRW. If these earlier actions relate to the claims asserted in his current complaint, Plaintiff shall list these, and any other, actions in his response to question 10.

Plaintiff was ordered to file his amended IFP application by April 6, 2016, or pay the filing fee by that date. *Id.*

On March 29, 2016, plaintiff sent a letter to the clerk's office indicating that he would file a "[n]ew and completed [IFP] form" by April 3, 2016. Dkt. No. 9. He did not do so, nor did he

1 pay the filing fee by April 6, 2016.

2 On April 6, 2016, this action was reassigned to the undersigned district judge. On April  
3 13, 2016, this Court issued an order denying plaintiff's IFP application, reasoning that plaintiff  
4 was given over four weeks to cure the deficiencies in his application and failed to do so. *See*  
5 *Andrews v. King*, 398 F.3d 1113, 1123-24 (9th Cir. 2005) ("In general, filing an action IFP is a  
6 privilege, not a right."). Dkt. No. 13.

7 The Court's April 13, 2016 order afforded plaintiff one additional week from the issuance  
8 of the order to pay the filing fee or to lodge with the Court an application for an extension of this  
9 April 20, 2016 deadline. *Id.* The order directed plaintiff that, if he sought an extension, he was  
10 required to "provide the Court with good cause to grant the extension and a reasonable date for  
11 payment of the fee." *Id.* The order cautioned plaintiff that the Court "retain[ed] the discretion  
12 to dismiss plaintiff's case should he fail to satisfactorily comply with these requirements." *Id.*

13 On April 18, 2016, plaintiff filed a letter with the Court stating that he had "been in the  
14 hospital for the last 12 days and unable to obtain [his] mail." Dkt. No. 15.

15 On April 22, 2016 plaintiff filed a first amended complaint, a renewed motion for leave to  
16 proceed *in forma pauperis*, a motion for "telephonic meetings [and] mailing documents," and a  
17 letter that again stated plaintiff would file a "[n]ew and completed [IFP] form" by April 3, 2016.<sup>1</sup>  
18 Dkt. No. 16, 18, 19, 20.

19 Plaintiff's second IFP application was not timely filed and still does not comply with the  
20 requirements of Judge Westmore's March 3, 2016 order. Dkt. No. 18; Dkt No. 6.<sup>2</sup> Plaintiff was  
21 on notice of the requirements of this order as of March 3, 2016 — a month prior to his  
22 hospitalization on or about April 6, 2016. Plaintiff has to date not paid the filing fee, despite  
23 Judge Westmore's order and this Court's April 13, 2016 order affording plaintiff an extension so  
24

---

25 <sup>1</sup> This letter appears to be a duplicate of the letter plaintiff mailed on March 29, 2016, with  
26 the date changed to April 9, 2016. Dkt. No. 9, 20.

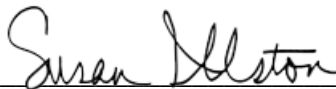
27 <sup>2</sup> Plaintiff's original, incomplete IFP application used the appropriate IFP form for the  
28 Northern District of California. Dkt. No. 2. Plaintiff's later IFP application (Dkt. No. 18) is on a  
different form ("Short Form"), which includes fewer questions. It is also incomplete, and does not  
include much of the information Judge Westmore ordered.

1 that he might pay the fee. Dkt. No. 13.

2 For these reasons, plaintiff's case is hereby DISMISSED without prejudice for failure to  
3 pay the filing fee.

4  
5 **IT IS SO ORDERED.**

6 Dated: April 26, 2016

7 

8 SUSAN ILLSTON  
9 United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28